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SENSITIVE

DHS FOR UNDER SECRETARY HUTCHINSON; DOJ FOR CRIMINAL
DIVISION BRUCE SWARTZ; STATE FOR EUR PDAS RIES, CA DAS
JANICE JACOBS, S/CT WILLIAM POPE;

E.O. 12958: N/A

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SUBJECT: SCENESETTER FOR APRIL 26 INAUGURAL SESSION OF THE
TRANSPORT, BORDER AND INFRASTRUCTURE SECURITY DIALOGUE
(TBIS)

REF: STATE 083901 (NOTAL)

1. Summary and introduction. The inaugural meeting of the high level dialogue on transportation, border and infrastructure security (TBIS) on April 26 is an important opportunity to break through the bureaucratic logjams between various EU components that have severely complicated efforts to advance our homeland security agenda with the EU. By bringing together several elements of the Commission, along with the Council Secretariat, the Irish Presidency, and newly-installed EU Counter-terrorism coordinator Gijsbert de Vries, we have a chance to get them to place existing EU efforts more squarely in the context of the struggle against terrorism. The EU was contemplating the creation of a similar structure when we tabled our proposal for the creation of this group.

2. On the EU side, the meeting will be formally co-chaired by Justice and Home Affairs (JHA) Director General Jonathan Faull and External Relations (RELEX) Deputy Director General Fernando Valenzuela. They have the lead, but we have found in the past that the real problems arise from more robust rules and regulations promulgated by "first pillar" directorates such as Transport/Energy and Internal Market. Representatives from these directorates will also be present at the session although not at the table. One of our key goals for the day should be to convince the "backbenchers" that their offices need to take better account of the implications of what they do for the war on terrorism. The Irish Presidency and the Council Secretariat should be allies in trying to push for a more comprehensive and balanced approach on these questions. End summary and introduction.

The Setting

3. The EU has indicated they want this first TBIS meeting to be a success - to have a positive agenda and to achieve concrete results. Within the EU this meeting is referred to as the "Enhanced Security Dialogue." We will need to explain our view that this meeting is not to replace our current discussion mechanisms on JHA issues. It is indeed precisely because our current JHA discussions address the issues of transport, border and infrastructure security in an unsatisfactory way that we have proposed this new mechanism. DG RELEX has confided to us that if this meeting can effectively bring together the various directorates to discuss these issues in a coordinated fashion it will have been a successful venture. The EC recognizes that it has "stove-piped" its handling of these issues and is hopeful that this new mechanism will assist in overcoming this problem. In addition to overcoming the "stove-piping" problem, we want to use this meeting to enhance the pivotal role of Jonathan Faull and his JHA Directorate in this dialogue as he is the one focusing on law enforcement and security aspects of these issues. We also want to underscore the important role that the newly-named Council terrorism coordinator Gijsbert De Vries can play.

4. There has long existed a tension among the various directorates of the Commission, the council secretariat and the Member States. This tension has only been exacerbated by the push to forge an EU counter-terrorism strategy. For example, the focus of the Transport and Internal Market Directorates is primarily commercial, while that of JHA is on law enforcement and security. Meanwhile, terrorism coordinator De Vries has been placed within the Council Secretariat and answers to High Representative Solana.

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Elements of the Commission do not acknowledge his position as having jurisdiction over their portfolios. The EU Counter-terrorism Declaration is a Member State document, but contains initiatives that touch on Commission competencies. This forum may bring some of these tensions to the fore. In this context, there is a danger that the session could be side-tracked into theological debate on the purpose of the

group. We will need to review this at the top of the meeting, but we should seek to move quickly to the other items on the agenda in order to look for practical outcomes.

15. There is much in the recently-adopted Council Declaration issued after the Madrid attacks that can be helpful in framing the agenda and purpose of the group. It also can provide a point of departure as we consider a possible joint Summit statement. De Vries will want to explain the initiatives (old and new), but we should try to steer him away from a presentation on a public document we have already read and digested. Instead, we should key on the declaration to begin a focus on how this will affect transatlantic efforts to cooperate more fully on law enforcement and improve security for transport/infrastructure and borders.

Priority Issues

16. Biometrics: The EU will expect an update regarding the Administration's efforts to persuade Congress to postpone the 10/26/2004 biometrics deadline. The EU has informed Congressman Sensenbrenner in writing of its efforts to coordinate the introduction of biometrics into Member State passports. An early, favorable decision by Congress regarding the deadline will be critical in managing the flow of legitimate travelers. The parallel policy change of enrolling visa waiver travelers in US VISIT on or about 9/30/2004 will also be raised by the EU. The lack of prior notification and expected negative public reactions as the date nears are two issues the EU may raise. Although the Commission has publicly stated it will not pursue reciprocal treatment of American travelers to the Schengen area, calls for reciprocity have already been heard in Europe (with the example of Brazil cited). Finally, the issue of visa waiver for new Member States continues to simmer. The Commission notified USEU that the Czech Republic has again demanded that visa waiver be discussed at the next JHA Council meeting. If this issue is raised at the TBIS, we suggest that it be deferred to a technical meeting later in the day between CA and DG JHA where DAS Jacobs will explain the legislative parameters to the VWP.

17. Border security: Our delegation might press for the following concrete results to enhance border security: a pilot project to share, on a reciprocal basis, 200 names from our lookout systems before the end of the calendar year. This gives the EU time to resolve potential legal and technical issues relating to the Schengen Information System (SIS). The Department's swift response to the EC's proposal on sharing lost/stolen passport information via Interpol (reftel State 83112) can be used as leverage to obtain from the EU a similar response on our proposed pilot for exchanging lookout information. A written proposal (similar to the one Jonathan Faull presented to the Department on lost/stolen passports) may be helpful in moving this suggestion forward.

18. Information Exchange: We might also like to flag a longer-term objective of exchanging on a reciprocal, routine basis information on visa applications that have been refused. DG JHA Head of Unit for IT Systems Frank Paul, who is charged with designing the Visa Information System (which will make such an exchange possible), has been selected for an IVP in FY 2005. His consultations in Washington during this program might serve to lay the foundation for a longer-term objective related to the VIS. Since this visa information would relate to aliens outside the EU, privacy objections should be minimized. In addition, SIS II is being developed in response to the enlargement. Agreement to cooperate with the EU on sharing data using the SIS II database must come quickly if the EU's system is to be designed with this objective in mind.

19. Link to G7/G8: Many of these border security initiatives are being simultaneously worked in the G8 Secure and Facilitated International Travel Initiative (SAFTI). Four EU member states and the Commission participate in these G8 discussions. We should anticipate that the dialogue with the EU will touch upon these G8 initiatives and programs.

10. PNR: After the Parliament vote, the Commission has stated that it will proceed with an 'adequacy finding' for PNR data transfers, but the Irish have been less emphatic that they will move forward on the associated "international agreement" in the Council. The TBIS will provide a good forum to push for rapid adoption of the deal. We can also use this opportunity to outline our approach on third country transfers of PNR data and send the signal we consider the question closed. We understand that in ICAO, some member states are pressing forward a proposal on airline passenger data that would call for a moratorium on PNR transfers until an ICAO standard is developed. We should ask the Commission and Council representatives present to explain their positions on this potentially damaging initiative.

11. CAPPS II: The Commission (DG Transportation and DG Markets) would also like a readout of where we are on implementation of the CAPPS II system after the February GAO report. That readout would include our best estimates on timing for the system's going live, and when we planned on initiating bilateral discussions to work out an 'adequacy finding' for operation of the system with EU data.

12. Air Marshals: In January 2004, U/S Hutchinson appeared before a special session of European Directors General of Civil Aviation and suggested that the U.S. and EU could work together to develop guidelines for the placement of sky marshals on flights, as well as alternate measures that countries could implement to substitute for assigning marshals. The Commission will want to discuss this matter further. They also wish to learn more about work TSA is doing with the UK on the 'gold standard' for placement of marshals.

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